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No. _____

In The

Supreme Court of the United States

Term, 19

PAUL E. RHODES, PETITIONER

V.

STAR HERALD PRINTING CO., A CORPORATION, THE SCOTTSBLUFF STAR HERALD, LEN PROPP, FLOYD WISNER, NORVAL HOUSTON, AND MARYLAND CASUALTY CO., INC., DEFENDANTS, APPELLEES, RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of Nebraksa

PAUL E. RHODES, Pro Se,
Convict No. 22107
Nebraska State Penitentiary,
without being charged with, tried for or convicted of a crime.
Lincoln, Nebraska

PAUL RHODES, Pro Se,
Council of Record
Nebraska State Penitentiary
Lincoln, Nebraska

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PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of Nebraksa

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Paul E. Rhodes for a Writ of Certiorari to be directed to the Supreme Court of the State of Nebraska, to review a judgment of that Court entered on the 9th day of March, 1962, and re-hearing denied on the 13th day of April, 1962.

OPINION BELOW

The opinion appealed from is entitled *Paul E. Rhodes v. Star Herald Printing Co., a corporation, The Scotts-*

bluff Star-Herald, Len Propp, Floyd Wisner, Norval Houston, and *Maryland Casualty Co., Inc.*, defendants and appellees and is reported in 173 Nebr. at page 496 and in N. W. —, and is printed in Appendix A hereto, infra, page 17.

JURISDICTION

The opinion and judgment sought to be reviewed was dated March 9, 1962, and was entered of record on that date. Behearing was denied on April 13, 1962 (Appendix A, page 22) contained in the transcript on page 70.

The jurisdiction of this court is invoked under the act of Congress of June 25, 1948, c. 646, 62 Stat. 929, 28 U. S. Code, Sec. 1257 (2) and (3), providing that this Court may, by Writ of Certiorari, review any final judgment for decree rendered by the highest court of a State in which a decision could be had, where any title, right, privilege be had, where any title, right, privilege or immunity especially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under the United States.

THE QUESTIONS PRESENTED FOR REVIEW

1. Does the petition state a cause of action against the defendants, appellees, and each of them?

2. Does the issuance of the Writ of Habeas Corpus and the Court taking jurisdiction of the *Body* in the Habeas Corpus proceeding suspend the original writ under which he was held and deprive the sheriff of all jurisdiction by reason of the original commitment Article I, Section 9 of the United States Constitution; Article I, Section 8 of the Nebraska Constitution and

Amendment XIV United States Constitution and terminate the duties of the Sheriff as to the original commitment?

3. Does a sheriff of a state have any right, duty or authority of jurisdiction to suspend the Writ of Habeas Corpus after the same has been issued and Court issuing same has taken possession and jurisdiction of the body of the prisoner to suspend the Writ of Habeas Corpus contrary to Article I Section 9, Constitution of the United States and Article I Section 8 of the Nebraska Constitution and Amendmen XIV of the United States Constitution and re-take and re-arrest prisoner on original commitment?

4. Is the publication that exposes the petitioner to public ridicule, ignominy and disgrace libelous and actionable per se, when same says sheriff is looking for petitioner to jail him when by due process of law he has no jurisdiction to jail petitioner?

5. The right of the defendants, and attorneys for defendants, to proceed with trial of the action and discuss the case with the court at a time when such defendants have the petitioner confined at involuntary servitude (HARD LABOR) and imprisoned and committed in the Nebraska State Penitentiary, by trial in absentia, without a trial by jury, and without charging this petitioner with a crime or convicting him of a crime is a denial of due process of law to petitioner contrary to XIV Amendment of the United States Constitution and refuse to bring petitioner before the Court or permit him to go to court in body.

6. Words spoken and published by the sheriff and other defendants that the sheriff was looking for peti-

tioner to place him in custody when he had no right, authority or jurisdiction to do so and in so doing would be violating Article I Section 9 and the XIV amendment of the United States Constitution are libelous (sic) per se.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U. S. Constitution, Amendment XIV, Section 1:

"* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction equal protection of the laws."

U. S. Constitution, Amendment IV:

"The right of people to be secure in their person, houses, papers, and effects, against unreasonable search and seizure, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

U. S. Constitution, Amendment XIII:

"Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

U. S. Constitution, Amendment VI:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy trial, by an impartial jury of the state and district wherein the crime shall have been committed * * * to be confronted with the witnesses against him * * *"

U. S. Constitution, Amendment VIII:

"Excessive bail shall not be required, nor excessive fines imposed, no cruel and unusual punishment inflicted."

U. S. Constitution, Article I, Section 9:

"* * * The privilege of the Writ of Habeas Corpus shall not be suspended * * *"

Nebraska Constitution, Article I, Section 2, R. R. S. Neb. Vol 2 page 42:

"Slavery prohibited. There shall be neither slavery nor involuntary servitude in this State, otherwise than for punishment of crime, whereof the party shall have been duly convicted."

Nebraska Constitution, Article I, Section 3, R. R. S. Neb. 1943, Volume 2 p. 56:

"Due process of law. No person shall be deprived of life, liberty or property without due process of law."

Nebraska Constitution, Article I, Section 8, R. R. S. Neb. 1943, Volume 2 p. 54:

"Habeas Corpus. The privilege of the Writ of Habeas Corpus shall not be suspended * * *"

Nebraska Constitution, Article I, Section 9, R. R. S. Neb. 1943, Vol. 2 p. 54:

"Bail; fines; imprisonment. * * * shall not be required, no excessive fines imposed, nor cruel and unusual punishment inflicted."

R. R. S. Neb. 1943, 29-2809:

"Applicant discharge; re-arrest for same offense prohibited; penalty; exceptions. Any person who shall

be set at large upon any habeas corpus, shall not be again imprisoned for the same offense * * *."

R. R. S. Neb. 1943, 29-2822:

"Habeas Corpus; adjournment of hearing; order for safekeeping of prisoner detained. When any writ of habeas corpus shall have been allowed, the court or the judge to which the same shall be returned, or to which it shall be adjourned, shall, for good cause shown, continue the cause and shall make order for safekeeping of the person imprisoned, or detain him, as the nature of the case may require."

STATEMENT

The action was started as a liabel and slander action in the District Court of Morrill County, Nebraska.

The petition (T7-10) that on January 14, 1960, the defendant Houston spoke slanderous words and the Scottsbluff Star Herald, a newspaper in general circulation printed an article about this petitioner set forth in full in the petition as follows (T7-10):

"SHERIFF CONTINUES SEARCH FOR BRIDGEPORT ATTORNEY RHODES."

"Bridgeport, Morrill County Sheriff Norval Houston late Wednesday said he is still looking for Paul E. Rhodes, Bridgeport attorney, whom he intends to take into custody unless a $1,000.00 bond is posted."

"The sheriff says he has been unable to find Rhodes, who Tuesday afternoon was released from Scotts Bluff county jail at Gering.

The bond referred to by the sheriff was set by Judge A. W. Crites of Chadron following a hearing in District Court Monday in which Rhodes was charged with second degree arson. Earlier in the day, Rhodes released a $1000.00 bond posted after

a preliminary hearing on the same charge Dec. 5 was taken into custody and filed for a writ of habeas corpus. He was brought before Judge McFarland and a hearing was set for Jan. 27. Rhodes was released without bond. After Judge Crites again set a $1,000.00 bond, Rhodes declined to post bond and was taken to jail here, later to Gering. At Gering, he was also issued a writ of habeas corpus and was released on a $1,000.00 bond after County Judge Ted R. Fiedler set a hearing for February 2."

The action is an action for libel and slander brought by this petitioner, *Paul E. Rhodes* against the defendants, *Star Herald Printing Company*, a corporation, the *Scottsbluff Star Herald*, *Len Propp*, the reporter; *Floyd Wisner*, the publisher; *Norval Houston*, the Sheriff of Morrill County, Nebraska, and the bonding company of the sheriff, *Maryland Casualty Co., Inc.* The defendants all filed general demurrers (T12-18) to petition which were sustained by the Trial Court (T25) at a time the petitioner was by the defendants reprived of his liberty on April 15, 1961, and committed to the Nebraska State Penitentiary on a commitment to hard labor, infamous punishment, without being afforded a jury trial, tried for or convicted of a crime, and was unlawfully deprived of his liberty on April 15, 1961, and made application to the court for a continuance and affidavit in support thereof filed April 14, 1961 (T22) that said motion for continuance was overruled by the court (T25) and petitioner contended this to be a denial of due process of law to hold court when defendants unlawfully deprived him of the right to be present by unlawfully depriving him of his liberty, denying him his day in court under color of State authority and denial of due process of law and violation of and repugnant to

the XIV amendment of the United States Constitution, and the action was dismissed by the court (T27).

The petition alleges (T9) the newspaper is owned by *Star Herald Printing Co.*, a corporation, is a daily newspaper in general circulation in Western Nebraska. *Floyd Wisner* is the publisher of the *Scottsbluff Star Herald* and *Len Propp* is alleged to be the writer of the article above quoted and basis for the action. The petition (T9) alleges that *Norval Houston* is the sheriff of Morrill County, Nebraska and the person alleged to have communicated the statement contained in the published article for the purpose of damaging the business and reputation of petitioner, a practicing lawyer at Bridgeport, Nebraska.

It is the contention of the plaintiff that the foregoing newspaper article as published and spoken was libelous per se and was not published with good motives and justifiable aims, and at the time of publication the plaintiff being lawfully at liberty pursuant to the two writs of habeas corpus mentioned in said article, the defendant sheriff *Houston* under color of the authority of his office, had neither power, authority, or jurisdiction to search for, arrest or deprive the petitioner of his liberty, that when the court of Scotts Bluff County granted the writ of habeas corpus and took possession of the body of petitioner the duty and functions of the sheriff defendant *Houston* to deprive petitioner of his liberty on the original commitment was not within the duties, functions, authority or jurisdiction of his office and further prohibited by Article I, Section 9 of the United States Constitution and Article I, Section 8 of the Nebraska Constitution prohibiting suspension of writ of habeas corpus and actions which were prohibited to the

sheriff by both United States Constitution and State Constitution and unlawful acts of the sheriff, Houston.

The Supreme Court of Nebraska (Appendix 20) indicate by citing *Kilgore* v. *Koen*, 133 Ore. 1, 288 P. 192, the sheriff was performing official duty and therefore had the right to suspend the writ of habeas corpus as an official function of his office.

The Nebraska Supreme Court further goes to Florida for its law at (Appendix 20).

The questions were all presented to the Supreme Court of Nebraska by appellant's brief on appeal (pp. 1-2, 5-6) and appellant's reply brief (pp. 2-3) and printed herein in the appendix A at pages 21, 22, and contained in the transcript at pages 38, 44.

The Supreme Court of Nebraska however did not consider or determine those issues and determined that Nebraska is a *police state*, not governed by and above the United States Constitution and by making this statement in its opinion Appendix A hereto attached Page 20:

"Public officers have a qualified privilege in reporting news items with reference to duties and functions of their offices." is holding to the effect that the officers are above and immune to the United States Constitution and can at their will suspend the writ of habeas corpus after it has been granted and the court has taken jurisdiction of the body pursuant thereto, and the court in holding in its opinion Appendix A page 20 "It does not purport to charge plaintiff with a crime. It does not subject him to ridicule, ignomony, or disgrace", ignores Article I,

Section 3 of the Nebraska Constitution and XIV Amendment of the United States Constitution and hold in actual fact that Nebraska is a police state in which petitioner can be legally deprived of his liberty without due process of law and that petitioner is not entitled to equal protection of the law, and that is what the court held when it held petitioner's petition did not state a cause of action against defendant. further when the court held the case could be tried, dismissed while defendant had plaintiff unlawfully deprived of his liberty in effect held petitioner could be deprived of his liberty unlawfully under color of state law, in effect actually held petitioner was not entitled to equal protection of the law.

REASONS FOR GRANTING THIS WRIT

The writ should be granted herein because of the apparent violations of petitioner's constitutional rights, wherein by the decision of the Nebraska Supreme Court herein hold the Sheriff of the county has the right, power, authority and jurisdiction to suspend the Writ of Habeas Corpus once it has been issued and the court taken jurisdiction of the BODY pursuant to the writ makes Nebraska a POLICE STATE and is repugnant to Article I, Section 9 of the United States Constitution and Article I, Section 8 of the Nebraska Constitution and XIV Amendment of the United States Constitution and the State Court has decided a Federal question in a way not in accord with applicable decision of the United States Supreme Court and is contra to this court's holding in *Barth* v. *Clise*, 12 Wall. 400, 20 L. Ed. 393 and *Stallings* v. *Splain* 253 U. S. 339, 40 S. Ct. 537, 64 L. Ed. 940.

We should further determine if it is a denial of due process and equal protection of the law under the XIV Amendment of United States Constitution to try an action in court and dismiss the same where the sheriff is a party defendant and has the petitioner falsely imprisoned, unlawfully imprisoned and he cannot therefore attend court.

I.

Upon issuance of Writ of Habeas Corpus and the Court taking jurisdiction of the body by virtue of said writ and discharging the prisoner on bail pursuant to Section 29-2822, R. R. S. Neb. 1943 re-issue 1956, the original cause of commitment is suspended.

This can best be set out by quoting from a Florida decision quoting from the United States Supreme Court, *Barth* v. *Clise*, 12 Wall. 400, 20 L. Ed. 393 the Florida case is *Gallat* v. *Allen* 89 So. 298 (Fla.) and is all applicable in case at bar to-wit:

> "(P. 399) "To dispose of this case properly we must consider this ancient writ, and what effect it has upon a person held in custody, and its effect with regard to the Writ or Warrant under which he was held prior to the service of the Writ of Habeas Corpus.
>
> "In a well-considered case on this subject the Court said: 'Taking some samples of many (under the maxim, ex uno disces omnes), the Writ of Habeas Corpus has been fondly termed by eminent persons who used no words lightly, "The dearest birthright of Britons," "the great bulwark of personal liberty," "the greatest Writ of Common Law," "the great Writ of Right." ' It would be of consequence both deep, wide and pernicious to abate by lot or title the sanctity of power of the ancient office of

that Writ: for a mere reference thereto brings a proud smile to every student of history of jurisprudence; and it is seemly for those who attend as priests at the altar of justice to well see to it that the flame of the lamp of personal liberty is kept alive, well trimmed and brightly burning. Says Justice Miller in Ex parte Lange, 18 Wall. 163, 21 L. Ed. 872: 'There no more sacred duty of a court than, in a case properly before it, to maintain unimpaired those securities for the personal rights of the individual which have received for ages the sanction of the jurist and the statesman; and in such case no narrow or illiberal construction should be given to the words of fundamental law in which they are embodied.' State ex rel. Evans v Broaddus, 245 Mo. 123, 149 S. W. 473, Ann Cas. 1914A, 823.

"We quote further from that opinion: 'The authority of all other writs must yield to the authority of the Writ of Habeas Corpus.' Church, Haf. Cor. 2d Ed. P. 139. Indeed (at least in time of peace) every human power must give way to it, and no prison door is stout enough to stand in its way. 'Ex Parte Creasy, 243 Mo. 679, 148 S. W. 914, 41 L. R. A. N. S. 478; Ex Parte Jilz, 64 Mo. 1, c. 218; 27 Am. Rep. 218. The studied eulogies said this writ would be "as sounding brass or a tinkling cymbal if their significance is to be brushed aside when brought to the test in a concrete case."

"Following this, the court forcibly laid down the rule that from the moment the sheriff received the writ of habeast corpus he holds the prisoner under that writ, and not under the writ of Capias or commitment. 'The premises considered, it results that when the Writ of Habeas Corpus issues, the officer hold the prisoner *under that writ and under no other. The original cause of commitment is suspended.* Therefore, from the moment the sheriff receives such writ, the custody of the pris-

oner will be by virtue thereof, and not under any other writ he may have previously received.' Matson v. Swanson, 131 Ill. 255, 23 N. W. 595. Agreeable to that doctrine is the reasoning of other cases and authorities cited by relator, ex gr., In re Kaine, 14 How., 14 U. S. (L. Ed.) 345; Barth v. Clise, 12 Wall. 401, 20 U. S. (L. Ed.) 393, 2 Story's Const. (5th Ed.) No. 1339; State ex rel Evans v. Broadus, supra.

"In the case Barth v. Clise, 12 Will. 400, 20 L. Ed. 393, the Supreme Court of the United States said: 'By the common law, upon the return of the writ of habeas corpus and the production of the body of the party suing it out, the authority under which the original commitment took place, is superseded. *After that time, and until the case is finally disposed of, the safe keeping of the prisoner is entirely under the control and direction of the court to which the return is made.* The prisoner is detained, not under the original commitment, but under the authority of the writ of habeas corpus. (The italics are ours).

"(3) The habeas corpus case under consideration is still pending. It is now in this court on writ of error. 'Until it is finally disposed of,' the prisoner is being held under the writ of habeas corpus, and the commitment or capias under which he was held prior to the service of the writ of habeas corpus on the sheriff is suspended and must remain so until the case is finally disposed of in this court."

In the early case of *Pomeroy* v. *Lappeus*, 9 Ore. 363, the Oregon Court stated:

(p. 365) "The circuit court acquired jurisdiction to examine into the cause of respondent's imprisonment, and to either remand or discharge him, according to the facts disclosed upon such examination, and the law applicable thereto, as

soon as the writ was served on the appellant, having the respondent still in his custody. Thereafter the appellant was bound to detain him in his custody upon that writ, subject to the orders of the court from whence it issued.

"The respondent might have become legally entitled to his discharge from the original detention and imprisonment, after the service of the writ in the habeas corpus proceeding, but in contemptation of law he was then in custody upon that writ, and the power to discharge him had vested in the tribunal issuing it.

"Without the sanction of that tribunal, neither of the parties could by any act of his own simply, oust it of its jurisdiction to make a final order in the case."

The law of the land as to due process of law and denial of liberty, and imposition of *infamous punishment* is set out in *Flannagan* v. *Jepson*, 177 Iowa 393, 158 N. W. 2d 362 and the Nebraska Supreme Court adopted it as the law of the land in the case of *Smolczyk* v. *Gaston*, 147 Neb. 681, 24 N. W. 2d 362 which opinon is applicable to the case at bar; the Iowa court said to-wit:

"The authorities *may be searched in vain* for any precedent, under our constitutional form of government, holding it to be in the power of a state to clothe its court with authority to visit infamous punishment upon any person for contempt or in any proceeding whatever, other than the orderly process of trial upon indictment or information. The authority to punish for contempt is, of course, quite indispensable to orderly and efficient administration of justice; but the very fact that such authority is subject to no appeal, and its application is summary to a degree bordering on the arbitrary, makes

it very essential that it shall not be enhanced to a point where our guarantees are lost sight of."

"TO RECAPITULATE: A sentence to *infamous punishment in the penitentiary at hard labor can be lawfully imposed under our constitution only as punishment for crime of which the accused has been duly convicted; one is not duly convicted of crime except in a proceeding giving opportunity for a jury trial;* a charge of contempt not being a charge of crime triable by jury THE COURT IS WITHOUT POWER OR AUTHORITY IN SUCH PROCEEDING to penalize the contempt by imposing a sentence which is constitutionally restricted to cases for conviction for crime." (Emphasis supplied by writer.)

"Ex parte Wilson, 114 U. S. 417, 5 Sup. Ct. 935, . . . ' For more than a century imprisonment at hard labor. . . penitentiary . . . has been considered an infamous punishment in England and America,' and further quotes approvingly the following language of Chief Justice Shaw, Jones v. Robbins, 8 Gray (Mass.) 329:

> 'A sentence to state prison for any term of time must be considered as falling within the meaning of *infamous punishment.* The convict is placed in a public place of punishment common to the whole state, subject to solitary imprisonment, clothed in conspicuous prison dress, subject to hard labor without pay, to hard fare, to have his hair cropped, course and meager food, and to severe punishment.'" (Emphasis supplied).

I submit to this Court by way of reason for granting the writ that if having the sheriff announce through the press that he is looking for an attorney in the town of his residence to jail him and can't find him, doesn't expose the petitioner and subject him to ridicule, ig-

nominy and disgrace, what would it take to do so? The Supreme Court of Nebraska to so hold in its opinion (Appendix 20) had to erroneously fail to give application to the above principles set forth in the statement and has erroneously failed to consider the Constitution of the United States as above set forth in the Statement and not in accord with applicable decisions of this Court, particularly the case of *Monroe* v. *Pape*, 81 S. Ct. 473, (1961); and *Barth* v. *Clise*, 12 Wall. 400, 20 L. Ed. 393; and *Stallings* v. *Splain* 253 U. S. 339, 40 S. Ct. 537, 64 L. Ed. 940; and the Nebraska Court ignored *Monroe* v. *Pape*, supra, holding that arrest without a warrant is a violation of Federal Civil Rights Act and the Fourth Amendment of the United States Constitution guarantees applicable to states by reason of due process of law clause of Fourth Amendment of the United States Constitution and that Article I, Section 9 of the U. S. Constitution is applicable to States by the same reason, and further the Supreme Court of Nebraska erroneously failed to give application of Article I, Section 8 of Nebrasa Constitution to the Writ of Habeas Corpus as they are required to do by reason of the 14th Amendment of the U.S. Constitution.

CONCLUSION

For the foregoing facts and reasons the petition for Writ of Certiorari to the Nebraska Supreme Court should be granted.

Respectfully submitted.

PAUL E. RHODES, No. 22107,
pro se
Nebraska State Penitentiary
Lincoln, Nebraska

APPENDIX

Opinion of Nebraska Supreme Court, Rhodes v. Star Herald Printing Co., et al., General No. 35149, 173 Neb. 496, — N. W. 2d — .

1. In order for a publication in a newspaper to be libelous per se, its nature and obvious meaning must be such as to impute to a person the commission of a crime, or subject him to public ridicule, ignominy, or disgrace.

2. There is no civil liability, in the absence of actual malice, for qualifiedly privileged, defamatory publications.

3. Whether or not a newspaper article is libelous per se is a matter of law for the court.

4. Newspaper article not expressing newspaper's opinion, but stating the acts and proceedings of courts and their officers relating to conduct of the plaintiff, is qualifiedly privileged, and not actionable in the absence of actual malice.

5. In determining whether publication is libelous per se, language of publication can alone be looked to, without the aid of innuendos not supported by the language used.

6. As a general rule fair and impartial reports of judicial, executive, or legislative official proceedings are considered as qualifiedly privileged, and are not actionable in the absence of actual malice.

7. Under the provisions of section 25-2221, R. S. Supp., 1959, all courts and their offices may be open for business on Saturdays, Sundays, and holidays in the discretion of the judges of such courts.

Heard before Carter, Messmore, Yeager, Spencer, Boslaugh, and Brower, JJ., and Scheele, District Judge.

CARTER, J.

This is an action for libel brought by the plaintiff, Paul E. Rhodes, against the defendants, Star Herald Printing Company, a corporation, the Scottsbluff Star

Herald, Len Propp, Floyd Wisner, Norval Houston, and Maryland Casualty Company, Inc. The trial court sustained general demurrers to the petition and, upon failure of the plaintiff to file an amended petition, dismissed the action. Plaintiff has perfected his appeal to this court.

The action is grounded on a news article published in the Scottsbluff Star Herald, a daily newspaper of general circulation in western Nebraska, which is owned by the Star Herald Printing Company, a corporation. Floyd Wisner is alleged to be the publisher of the Scottsbluff Star Herald and Len Propp is alleged to be the writer of the article constituting the basis for the action. The petition alleges that Norval Houston is the sheriff of Morrill County, Nebraska, and the person alleged to have communicated the statements, contained in the published article, to Len Propp with the intention that they be published for the purpose of damaging the business and reputation of the plaintiff, a practicing lawyer at Bridgeport, Nebraska.

The headline of the published article, dated January 14, 1960, stated: "Sheriff Continues Search for Bridgeport Attorney Rhodes." The article continued in substance as follows: The sheriff of Morrill County late Wednesday said he is still looking for Paul E. Rhodes, Bridgeport attorney, whom he intends to take into custody unless a $1,000 bond is posted. He stated that he had been unable to find Rhodes since he had been released from jail on Tuesday. The bond referred to by the sheriff was set by Judge A. W. Crites of Chadron following a hearing in district court on Monday in which Rhodes released a $1,000 bond posted on December 5, after a preliminary hearing on the same day, was taken into custody, and filed for a writ of habeas corpus. He was brought before Judge McFarland, a hearing was set for January 27, and he was released without bond. After Judge Crites again set a $1,000 bond, Rhodes declined to post bond and was lodged in the county jail at Gering. At Gering he was also

issued a writ of habeas corpus and released on a $1,000 bond after hearing was set for February 2.

It is the contention of plaintiff that the foregoing is libelous per se and that it was not published with good motives and justifiable aims. It is alleged that the publication was made for the sole purpose of injuring the plaintiff in his business and to cause him and his family mental pain and anguish, which he asserts they have suffered. He alleged that his business, his reputation, and his credit have been damaged in the aggregate sum of $998,000, for which amount he prayed judgment.

A party who stands on a general demurrer to a petition thereby admits the material facts averred, and must take all the consequences which result from such admission. Panebianco v. City of Omaha, 151 Neb. 463, 37 N. W. 2d 731. For the purposes of this appeal we shall treat the facts well pleaded as true. It will be noted, however, that plaintiff does not contend that the facts stated in the published article are false. The published article does not charge the plaintiff with the commission of crime or assert that he is a fugitive from justice. It does not state that the sheriff of Morrill County intends to take Rhodes into custody for failure to post a $1,000 bond fixed by the district court. The contention of plaintiff that the published article imputes an indictable offense cannot be sustained.

In World Publishing Co. v. Mullen, 43 Neb. 126, 61 N. W. 108, 47 Am. S. R. 737, this court stated the general rule to be as follows: "The rule is that any language the nature and obvious meaning of which is to impute to a person the commission of a crime, or to subject him to public ridicule, ignominy, or disgrace, is actionable of itself." See, also, Barry v. Kirkland, 149 Neb. 839, 32 N. W. 2d 757.

In Fitch v. Daily News Publishing Co., 116 Neb. 474, 217 N. W. 947, 59 A. L. R. 1056, this court said: "A newspaper is allowed to make comments, draw deductions, and slightly add to court documents, if such infer-

ences are fair, honest, and truthful deductions from the privileged proceedings, but of course it does not follow that a newspaper has permission to publish a lie at any time." In the foregoing case we cited the following with approval: "It is not open to dispute that a fair report in a newspaper of pending judicial proceedings is proper, and that this privilege extends to all matters which have been made the subject of judicial proceedings, though such proceedings may be merely preliminary, or interlocutory, or even ex parte."

The article published appears to be a fair and impartial statement of facts dealing with judicial proceedings, the truth of which is not denied. It appears to have been published in good faith and to have been free from malice. The plaintiff contends that animus and malice appear by innuendo. We point out that in an action for libel per se the language of the publication can alone be looked to, giving the language its usual and ordinary meaning. Innuendo may not be resorted to in such a case except when it is supported by the language of the publication without outside aid. Layne v. The Tribune Co., 108 Fla. 177, 146 So. 234, 86 A. L. R. 466.

An examination of the published article reveals that it is a mere statement of facts. It does not purport to charge the plaintiff with a crime. It does not subject him to ridicule, ignominy, or disgrace. It purports only to be a statement of the acts of the courts and their officers in relation to court proceedings, the fixing of bonds, the failure of plaintiff to post bond, and the attempt of an officer to take plaintiff into custody in default of such bond. Such a statement recites facts which the public is entitled to know and falls within the rule of qualified privilege that protects a newspaper in the dissemination of news. See Restatement, Torts, s. 611, p. 293.

It was likewise proper for the sheriff to detail the circumstances and the facts that brought about the existing situation. Kilgore v. Koen, 133 Ore. 1, 288 P. 192. Public officers have a qualified privilege in re-

porting news items with reference to the duties and functions of their offices. Such qualified privilege extends to fair and accurate reports germane to their public duties and made in good faith without malice. Fitch v. Daily News Publishing Co., *supra*; Kilgore v. Koen, *supra*.

Under the foregoing authorities the petition of plaintiff does not state a cause of action for libel per se. The trial court therefore properly sustained the demurrer and dismissed the action. See McClure v. Review Publishing Co., 38 Wash. 160, 80 P. 303.

Plaintiff contends that the order dismissing his petition is void for the reason that it was made on a Saturday. This point is controlled by section 25-2221, R. S. Supp., 1959, which states in part: "Notwithstanding any other provision of law, all courts and their offices may be closed on Saturdays, Sundays, and (named holidays)." By this provision, the Legislature left to the discretion of the courts as to whether or not the courts and their offices should be closed on Saturdays, Sundays, and holidays. When in the judgment of the court it is necessary to hold court on any such days, it is within the province of the court to do so. On the other hand, the court may with propriety decline to hold court on any of such days. The record shows that plaintiff had ample notice of the date of the hearing. It is not contended by plaintiff that he was in any manner prejudiced by the action of the court in setting the hearing on a Saturday. There is no merit to plaintiff's contention on this assignment of error.

The judgment of the trial court is in all respects correct and it is affirmed.

AFFIRMED.

Questions In Appellant's Brief and Reply Brief To the Supreme Court of Nebraska

1. The right of the Court, defendants, and counsel, attorney for defendants, to proceed with the trial of the

action and dismiss the case at a time when they have plaintiff confined at involuntary servitude in Nebraska State Penitentiary, by trial in absentia, without a jury and without charging this plaintiff or trying him for or convicting him of a crime.

2. Whether the petition states a cause of action against the separate general demurrers of defendants or any of them.

1. Does the issuance of the Writ of Habeas Corpus and the Court taking jurisdiction of the body in a habeas corpus proceeding suspend the original writ under which he was held, and therefore deprive the sheriff of all jurisdiction by reason of the original commitment?

2. Does the sheriff have the right to suspend the Writ of Habeas Corpus, contrary to Article I, Section 9 Constitution of the United States and Article I, Section 8 of Nebraska Constitution?

3. Is a publication that exposes and subjects plaintiff to public ridicule, ignominy and disgrace libelous and actionable per se?

4. Did the petition of plaintiff state a cause of action against the defendants, appellees and each of them?

Order Overruling Motion For Rehearing

Supreme Court of Nebraska, January Term, A.D. 1962. April 13. Paul E. Rhodes, Appellant v. Star Herald Printing Company, A corporation, the Star Herald; Len Propp; Floyd Wisner; Maryland Casualty Co., Inc., Appellees.

This cause coming on to be heard upon motion of appellant for rehearing herein was submitted to the court; upon due consideration whereof; the court finds no probable error in the judgment of this court heretofore entered herein. It is, therefore, considered, ordered, and adjudged that said motion for rehearing be, and it hereby is, overruled and a rehearing herein is denied.